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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,890	01/09/2002	Roger Rogalski	521.515	1131
21707	7590	01/22/2004		
IAN F. BURNS & ASSOCIATES 1575 DELUCCHI LANE, SUITE 222 RENO, NV 89502				
			EXAMINER	
			ISABELLA, DAVID J	
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 01/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/045,890

Applicant(s)

ROGALSKI

Examiner

DAVID J ISABELLA

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 1-11, 17, 18, 20 and 23-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-16, 19, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☒ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: \_\_\_\_\_

***Election/Restrictions***

Applicant's election without traverse of Group 1, claims 12-16,19,21 and 22 by telephone interview on 12/3/03 is acknowledged.

Claims 1-11,17,18,20,23-25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in a telephone interview on 12/3/03.

***Specification***

The disclosure is objected to because of the following informalities: on page 10, line 14, the recitation of "fingers 17" should be changed to --fingers 14--.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12,13,15-16,21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Walder-Utz et al (5779720) or Archibald (4267842).

Walder-Utz et al discloses a graft device comprising an interior tissue surface (16) and an exterior tissue surface (12). The device includes an attachment structure

(17). The device contains a central portion ( that portion of the device forming the "c-shaped" sleeve terminating at the attachment structure (17); and fingers (10) are integral with the central portion of the sleeve. Likewise, Archibald discloses a graft device comprising a sleeve having a C-shaped cross section defining a cavity. The central portion of the sleeve contains at least one finger integrally attached thereto.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Archibald or Walder-Utz et al as applied to claim 12 above, and further in view of Shichman et al (5439479).

While Walder-Utz et al is not specific to the material composition of the surgical clip, Shichman et al teaches that bioabsorbable material may be used to make surgical clips. It would have been obvious to one with ordinary skill in the art to fabricate the surgical clip of Walder-Utz et al from a bioabsorbable material to allow for the slow invasion of natural tissue growth into the surgical site in view of the teachings of Shichman et al.

***Claim Rejections - 35 USC § 103***


Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walder-Utz et al or Archibald as applied to claim 12 above, and further in view of de Medinaceli.

The use of visual markings or indicators on graft devices to allow for more accurate reference for the surgeon is taught by de Medinaceli. To provide the graft device of either of Walder-Utz et al or Archibald with visual markings or indicators to facilitate proper placement of the device in vivo would have been obvious to one with ordinary skill in the art from the teachings of de Medinaceli.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J ISABELLA whose telephone number is 703-308-3060. The examiner can normally be reached on MONDAY-FRIDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 703-308-2111. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



DAVID J ISABELLA  
Primary Examiner  
Art Unit 3738

DJI  
DECEMBER 3, 2003